

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TIMOTHY E. MITCHELL,

Plaintiff,

v.

CAMDEN COUNTY JAIL,

Defendant.

HONORABLE JEROME B. SIMANDLE

Civil Action

No. 16-cv-06202 (JBS-AMD)

OPINION

APPEARANCES:

Timothy E. Mitchell, Plaintiff Pro Se
161 Madison Ave.
Gloucester, NJ 08312

SIMANDLE, District Judge:

1. Plaintiff Timothy E. Mitchell seeks to bring a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Camden County Jail ("CCJ"). Complaint, Docket Entry 1.

2. Section 1915(e)(2) requires a court to review complaints prior to service in cases in which a plaintiff is proceeding *in forma pauperis*. The Court must *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. This action is subject to *sua sponte* screening for dismissal under 28 U.S.C. § 1915(e)(2)(B) because Plaintiff is proceeding *in forma pauperis*.

3. For the reasons set forth below, the Court will dismiss the complaint with prejudice in part and without prejudice in part for failure to state a claim. 28 U.S.C. § 1915(e)(2)(b)(ii).

4. To survive *sua sponte* screening for failure to state a claim, the complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014). "[A] pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

5. Plaintiff brings this action pursuant to 42 U.S.C. § 1983¹ for alleged violations of Plaintiff's constitutional

¹ Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" 42 U.S.C. § 1983.

rights. In order to set forth a *prima facie* case under § 1983, a plaintiff must show: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman v. Twp. of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995) (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)).

6. Generally, for purposes of actions under § 1983, "[t]he term 'persons' includes local and state officers acting under color of state law." *Carver v. Foerster*, 102 F.3d 96, 99 (3d Cir. 1996) (citing *Hafer v. Melo*, 502 U.S. 21 (1991)).² To say that a person was "acting under color of state law" means that the defendant in a § 1983 action "exercised power [that the defendant] possessed by virtue of state law and made possible only because the wrongdoer [was] clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49 (1988) (citation omitted). Generally, then, "a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law." *Id.* at 50.

² "Person" is not strictly limited to individuals who are state and local government employees, however. For example, municipalities and other local government units, such as counties, also are considered "persons" for purposes of § 1983. See *Monell v. N.Y.C. Dep't of Social Services*, 436 U.S. 658, 690-91 (1978).

7. Because Plaintiff has not sufficiently alleged that a "person" deprived him of a federal right, the complaint does not meet the standards necessary to set forth a *prima facie* case under § 1983. Plaintiff seeks monetary damages from CCJ for allegedly unconstitutional conditions of confinement. The CCJ, however, is not a "person" within the meaning of § 1983; therefore, the claims against it must be dismissed with prejudice. See *Crawford v. McMillian*, 660 F. App'x 113, 116 (3d Cir. 2016) ("[T]he prison is not an entity subject to suit under 42 U.S.C. § 1983.") (citing *Fischer v. Cahill*, 474 F.2d 991, 992 (3d Cir. 1973)). Because the claims against the CCJ must be dismissed with prejudice, the claims may not proceed and Plaintiff may not name the CCJ as a defendant.

8. Plaintiff may be able to amend the complaint to name a person or persons who were personally involved in the alleged unconstitutional conditions of confinement, however. To that end, the Court shall grant Plaintiff leave to amend the complaint within 30 days of the date of this order.

9. However, to the extent the complaint seeks relief for conditions Plaintiff encountered during confinements ending prior to September 30, 2014, those claims are barred by the statute of limitations and must be dismissed with prejudice,

meaning that Plaintiff cannot recover for those claims because they have been brought too late.³

10. All but one of Plaintiff's four alleged confinements at the CCJ occurred outside of the statute of limitations for claims brought pursuant to § 1983. Plaintiff alleges he was confined at the CCJ from September 2006 to January 2007, September 2012 to February 1, 2013, February 13, 2013, to September 11, 2013, and February 2015 to May 22, 2015. Complaint § III. Civil rights claims under § 1983 are governed by New Jersey's limitations period for personal injury and must be brought within two years of the claim's accrual. *See Wilson v. Garcia*, 471 U.S. 261, 276 (1985); *Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010). "Under federal law, a cause of action accrues when the plaintiff knew or should have known of the injury upon which the action is based." *Montanez v. Sec'y Pa. Dep't of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014). The allegedly unconstitutional conditions of confinement Plaintiff encountered at CCJ would have been immediately apparent to Plaintiff at the time of his detention;⁴ therefore, the statute

³ Plaintiff filed this complaint on September 30, 2016.

⁴ The fact section of the complaint states: "Went to 7 day quarantine where I was stepped on by heroin withdrawal inmate and water from a urinated toilet. I also had receive [sic] MRSA from the unsanitary conditions of not being allowed to shower for some days during the stay. I was not even allowed to shower. The correctional officers placed me in a cell that was filled with 4 inmates and some of the time 5 inmates." Complaint § III.

of limitations for Plaintiff's September 2006 to January 2007, September 2012 to February 1, 2013, and February 13, 2013, to September 11, 2013, claims expired, respectively, in January 2009, February 2015, and September 2015, well before this complaint was filed in September 2016. Plaintiff therefore cannot recover for these claims.⁵

11. As Plaintiff may be able to amend his complaint to address the deficiencies noted by the Court, the Court shall grant Plaintiff leave to amend the complaint within 30 days of the date of this order. However, in the event Plaintiff does elect to file an amended complaint, in addition to naming a proper defendant, Plaintiff should focus only on the facts of his 2015 confinement. Because Plaintiff's claims arising from his earlier confinements are barred by the statute of limitations and must be dismissed with prejudice, Plaintiff may not assert these claims in the amended complaint.

Plaintiff does not allege when these events occurred, however, and it is therefore unclear which events, if any, occurred within the statute of limitations for Plaintiff's claims.

⁵ Although the Court may toll, or extend, the statute of limitations in the interests of justice, certain circumstances must be present before it can do so. Tolling is not warranted in this case because the state has not "actively misled" Plaintiff as to the existence of his cause of action, there are no extraordinary circumstances that prevented Plaintiff from filing his claim, and there is nothing to indicate Plaintiff filed his claim on time but in the wrong forum. See *Omar v. Blackman*, 590 F. App'x 162, 166 (3d Cir. 2014).

12. Plaintiff should note that when an amended complaint is filed, the original complaint no longer performs any function in the case and cannot be utilized to cure defects in the amended complaint, unless the relevant portion is specifically incorporated in the new complaint. 6 Wright, Miller & Kane, Federal Practice and Procedure 1476 (2d ed. 1990) (footnotes omitted). An amended complaint may adopt some or all of the allegations in the original complaint, but the identification of the particular allegations to be adopted must be clear and explicit. *Id.* To avoid confusion, the safer course is to file an amended complaint that is complete in itself.⁶ *Id.*

13. For the reasons stated above, the claims arising from Plaintiff's September 2006 to January 2007, September 2012 to February 1, 2013, and February 13, 2013, to September 11, 2013, confinements are barred by the statute of limitations and therefore are dismissed with prejudice. The remainder of the complaint, insofar as it seeks relief for conditions Plaintiff encountered during his 2015 confinement, is dismissed without prejudice for failure to state a claim. The Court will reopen the matter in the event Plaintiff files an amended complaint within the time allotted by the Court.

⁶ The amended complaint shall be subject to screening prior to service.

14. An appropriate order follows.

June 29, 2017

Date

s/ Jerome B. Simandle

JEROME B. SIMANDLE

U.S. District Judge